

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of Pacific Bell for
Arbitration of an Interconnection Agreement
with MFS/WorldCom Pursuant to Section 252(b)
of the Telecommunication Act of 1996.

Application 99-03-047
(Filed March 22, 1999)

**ADMINISTRATIVE LAW JUDGE'S RULING
REOPENING PROCEEDING AND SOLICITING
COMMENTS REGARDING REMAND ORDER**

This ruling is issued to reopen the above-captioned proceeding for the limited purpose of reconsidering issues raised by the remand of Decision (D.) 99-09-069, as ordered by the United States District Court, Northern District of California (Court) in the matter of MCI WorldCom Communications, Inc. (WorldCom) versus Pacific Bell Telephone Company (Pacific) (No. C-00-2171 VRW). The Court granted plaintiff WorldCom's motion for summary judgment, and remanded the case to this Commission for further proceedings consistent with the ruling of the Court.

The remand directed this Commission to reconsider its decision on one disputed issue in the above-referenced arbitration of an interconnection agreement between Pacific and WorldCom. As discussed in D.99-09-069, Pacific and WorldCom brought a dispute to the arbitration relating to the appropriate reciprocal compensation rate for termination by WorldCom of local traffic originated by Pacific. The Commission, in D.99-09-069, adopted Pacific's position, thereby denying WorldCom the higher "tandem switch" rate, and

instead adopting the lower “end office switch” rate for Pacific-originated traffic transported and terminated by WorldCom.

This ruling hereby provides notice and opportunity for parties to file comments pursuant to the issues raised on remand concerning whether the Commission erred in its adoption of the end office rate for purposes of compensation on the basis set forth in D.99-09-069.

In making its determination, the Commission applied Federal Communications Commission (FCC) Rule in Sec. 51.711(a)(3), which requires application of a “geographic area test.” Sec. 51.711(a)(3) states:

Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC’s tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC’s tandem interconnection rate.

Although the FCC Rule only mentions the geographic area test, the FCC’s Local Competition Order stated that in applying this rule, state commissions shall consider the “functional equivalency” of the carriers’ networks. The functional equivalency test requires that a CLEC’s switch function like a tandem switch in order to qualify for the tandem switch rate. In D.99-09-069, the Commission applied the functional equivalency test as part of its basis for concluding that the tandem rate could only apply where the CLEC actually performs the tandem switching functionality equivalent to that of Pacific.

In an opinion letter that issued after the Commission’s decision, however, the FCC noted the confusing language in the text of its Local Competition Order and clarified that only a geographic area test is required. The Court found, therefore, that the Commission erred when it required WorldCom to satisfy the “functional equivalency” test in order to receive the tandem switch rate.

The Court also found the Commission's application of the geographic equivalency test was incorrect. In the arbitration, WorldCom claimed that its network of fiber rings, switching and transport nodes allowed WorldCom to serve a geographic area comparable in size to the areas served by Pacific's tandem switch. As such, WorldCom argued that it was entitled to the same tandem switch rate as Pacific charged it for transport and termination of calls.

The Final Arbitrator's Report (FAR) in the above-referenced proceeding concluded that WorldCom's switches do not serve the same or comparable area as Pacific, and thus WorldCom's claim that it is entitled to reciprocal compensation for those functions was rejected. The FAR relied on three factors in finding that WorldCom did not serve an equivalent geographic area:

(1) WorldCom forced Pacific to provide the bulk of transport by interconnecting only at one point, so it did not serve an equivalent geographic area; (2) Any similarity in geographic scope would soon disappear when WorldCom adds more switches to its network; and (3) the fact that WorldCom serves many of its customers directly at its interconnection point to Pacific, rather than via its fiber rings, limits the geographic scope of the customer base that it serves.

The Court found that although the first factor relied on in the FAR is not relevant to the geographic area test, there was no legal error since the Commission did not uphold the FAR on this particular criterion. The Commission did, however, rely on the second and third factors cited in the FAR in D.99-09-069. The Court found that the second factor relied on by the Commission was not relevant to the geographic area test, and that speculation about the future geographic scope of WorldCom's network is improper and constitutes legal error. The Court found that the third factor relied on by the Commission was in fact relevant to the geographic area test.

The Court stated that it would not “second guess what the Commission would have done if it had not improperly relied on irrelevant factors in applying the geographic scope test.” Therefore, the Court remanded the case to this Commission for proceedings consistent with its order.

Accordingly, this ruling is issued to solicit comments as to whether D.99-09-069 should be modified with respect to the adopted treatment of the tandem switching rate, consistent with a proper application of the relevant legal standard as remanded by the Court. Because the grounds upon which the Court remanded the case had only to do with the application of a legal test, there is no need to take further evidence on factual disputes. Parties’ briefs should be limited to argument based on the existing record as to whether the correction of the legal error found by the Court changes the result that should have been reached in D.99-09-069.

Following review and receipt of comments, a further determination will be made concerning the disposition of the remanded issue.

IT IS RULED that:

1. Parties are hereby provided notice of the reopening of the above-referenced docket pursuant to the remand by the United States District Court.
2. Parties are hereby provided opportunity to file comments regarding whether the Commission erred in its adoption of the end office switching rate in D.99-09-069, or what, if any, different result should be applied, consistent with proper application of the legal standard for evaluation as set forth in the U.S. District Court Remand Order.
3. In filing comments, parties shall not introduce new factual evidence, but shall limit arguments to the existing evidentiary record, consistent with the relevant legal standards set forth in the Remand Order.

4. Opening comments shall be filed by June 10, 2002 and reply comments shall be filed by June 17, 2002.

Dated May 23, 2002, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Reopening Proceeding and Soliciting Comments Regarding Remand Order on all parties of record in this proceeding or their attorneys of record.

Dated May 23, 2002, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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A.99-03-047 TRP/eap